

## CALIFORNIA STATE COASTAL CONSERVANCY

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BY FACSIMILE TRANSMISSION

Robert Philibosian  
Baker & McKenzie  
777 S. Figueroa Street, 37th Floor  
Los Angeles, CA 90017-2513

Dear Mr. Philibosian:

I received yesterday copies of two draft agreements regarding grants of access rights to the public by the Malibu-Encinal Homeowners' Association, and I have reviewed these drafts with Conservancy legal counsel.

The proposed agreements raise several issues that we have discussed previously, principal among which is the Association's legal authority to grant access rights to the public based upon the Association's easement rights. My legal counsel has also raised questions regarding the enforceability of the agreements and the Association's procedures for making such a grant.

It would also appear that neither the right to traverse "Lot I" nor the right to use Sea Level Drive, if these rights can be and are conveyed to the public, would yet enable the public to reach the beach. Given the intervening parcels on the south side of Sea Level Drive, some further rights of access would appear to be necessary for the public to avoid trespassing on private lands.

As I indicated, the Conservancy has already initiated a study of the physical suitability of "Lot I" as a public access corridor, and we expect to complete that assessment within 4-6 weeks. Absent such an analysis, the proposed grant of this area and the suggested \$25,000 improvement fund are both questionable as to their effectiveness in accomplishing public access.

Despite these concerns, I do wish to convey the very great interest of the Conservancy staff in the proposals of the Association. I recognize the difficulty of crafting a workable solution to the access problem under the time constraints imposed by the pending coastal permit application. Each of the issues described above can be objectively analyzed, and a determination made as to whether these are circumstances that would prevent the accomplishment of public access. In the space of one day, however, this is not possible.

I would be very happy to work with you and the Association to determine how public access may be provided. I can not, however, endorse the current draft proposals as a sufficient means of doing so.

Please contact me at your convenience if you have any question about this matter.

Very truly yours,

  
Steve Horn  
Program Manager